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Report on North-Carolina
Cherokees

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REPORT

OF THE

Judiciary Committee

ON THE

NORTH-CAROLINA CHEROKEES.

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REPORT OF THE COMMITTEE ON JUDICIARY.

The Committee on the Judiciary, to which was referred a bill to amend an act passed at the session of A. D., 1783, and which secured to the North-Carolina Cherokee Indians a permanent home in the State, have had the same under consideration, and authorized the following report to be made thereon. The committee recommend striking out all after the enacting clause, and inserting amendment marked A.

The bill, as amended, recognizes the right of the council of the North Carolina Cherokees to exercise police regulations over their own people to the extent exercised by incorporated towns and cities, agreeably to the constitution and laws of the State, and confines the provisions of the act of 1783, to the lands owned by said Indians, and which they may acquire by purchase, adjacent to the hunting grounds reserved under the treaty of 1791, on the Iron or Smoky Mountain, in the northern portion of Jackson and Macon Counties, including in the right to purchase, the widow and children of the late Junaluska. It also makes provision for the escheated property of the Indians, to be applied, under the direction of the council, to the advancement of education and civilization among their people.

The committee have deemed it proper to refer to an act and resolution passed by the General Assembly of the State of North-Carolina, in relation to those Indians, as well as to treaties concluded with their tribe, under which a large portion of their lands were ceded to the United States for the

benefit of North-Carolina, and as construed and settled by the Supreme Court of North-Carolina, as well as by the acts of Congress of the United States, as expounded by the Attorney-General.

By the act of 1783, the State of North-Carolina not only acknowledges the title of the Cherokees to the lands claimed by them within her limits, but actually guaranteed the title for the purpose of securing to them a permanent home within her limits. After reciting the boundary of the lands of the North-Carolina Cherokees, the act contains this guarantee of residence and title: "The lands contained within the aforesaid bounds shall be, and are hereby reserved to the Cherokee Indians and their nation forever." In 1808, the tribe, as shown by the preamble to the treaty of 1817, be, and are divided into upper and lower towns, the former embracing the towns within the limits of the grant made to the Cherokees under the act of 1783. The upper towns, embracing the North-Carolina Cherokees, sent a deputation to Washington City, to represent to the President of the United States, the desire of their people to "engage in the pursuits of agriculture and civilized life," and to remain permanently in the country they then occupied, while the lower towns desired to remove West, "where game was more plenty." The President of the United States, after maturely considering the petitions of both parties, on the 9th of January, 1809, answered the Cherokees as follows: "The United States, and the friends of both parties, and as far as can be reasonably asked, are willing to satisfy the wishes of both. *Those who remain may be assured of our aid and good neighborhood.*" [See recital in the preamble to the treaty of 1817.] During the war of 1812, the Creek tribe of Indians espoused the cause of Great Britain, and the Cherokees took up arms in behalf of the United States. At the battle of Horse Shoe, Capt. Junaluska, and his warriors, are represented as having fought bravely, and saved General Jackson's army from being cut off and massacred by the Creek Indians. This led to the policy of circumscribing the limits of the North-Carolina Cherokees, to make room for the white settlements and allow them to become citizens. And

the principal consideration, and the only one given by the State, was, acquiescence in the provisions of the 8th article of the treaty of 1817, extended by the 2nd article of the treaty of 1819. Under the 8th article, provision was made, not only to secure to the Cherokees a permanent home, but to elevate them to the high privilege of becoming citizens of the United States. "And to each and every head of an Indian family, residing on the East side of the Mississippi river, on the lands that are now, and may hereafter be surrendered to the United States, who may wish to become citizens of the United States, the United States agree to give a reservation of six hundred and forty acres of land, in a square, to include their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee Agent." [See Book of Indian Treaties, page 213.]

Of the North-Carolina Cherokees now remaining east, a large portion is represented to have availed themselves of this privilege; and Quallatown, in the county of Jackson, is represented to be situated on one of those reservations granted to a Cherokee by the name of Jacob.

In consequence of a part of the reservations not having been located before the State's surveyors surveyed and sold out the territory acquired by the Cherokee treaty of 1817 and 1819, a conflict of title arose between the reservees and the purchasers of the State's title, which was finally decided by the Supreme court of the State, when the right of the Indian to citizenship and to his reservation of land was sustained by the court. (See decision, Euchella vs. Welch, 3rd Hawks, page 155.)

In the opinion of the court, delivered by Chief Justice Taylor, it is stated "the prevalent policy before the revolution was, to consider the Indians as persons capable of being treated with, and holding property as a tribe or nation. Their right of property, though much circumscribed by the repeated cessions they have made by treaty, was respected as to what remained, and much solicitude is shown in repeated enactments to restrain the cupidity of the whites."

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"In pursuance of this policy, the people of this State, when they threw off their colonial dependence, and declared the soil to be the property of the community, were not unmindful of Indian rights: Provided always, that this declaration of right shall not prejudice any nation or nations of Indians, from enjoying such hunting grounds as may have been secured to them by any former or future Legislature of this State."

Since the treaty of peace, by which the territorial limits of the State were acknowledged in full sovereignty, as they formerly belonged to the mother country, it has been the invariable object of the United States, and of this State, to regulate their intercourse with the Indians, not by any speculative notions of right which they might have exercised without violating any admitted principle, but by the dictates of a just and humane and liberal policy. * * * *

"Of the policy of this State, the act of 1783, C. 185, under which the plaintiff claims title, affords a conclusive example. By this act it is declared that the Cherokee Indians shall have and enjoy all the tract of land therein described, and that is reserved to them and their nation forever. The effect of this grant was, to vest the land in the nation in fee simple; it conveyed to them a specific and definite right, according to which they were no longer to be considered as tenants at sufferance, but as holding under the faith of the State, and the guarantee of the declaration of rights." * * *

"If this grant required confirmation, it has received it in the most ample manner by the treaty of Hopewell, 1785, made under the authority of the United States, and by the treaty of Holstein, 1791, by which the lands not ceded by the Cherokee nation are solemnly guaranteed to them.

"In this state of things the two treaties were made, under which the plaintiff claims the land described in the declaration as having been set off and allotted to him, and located according to the terms of the treaties, 1817 and 1819.

"The eighth article of the first treaty provides that a reservation of six hundred and forty acres of land shall be given to every head of an Indian family residing on the east side of

the Mississippi river, the register of whose names shall be filed in the office of the Cherokee agent. The land is to be laid off in a square, including their improvements, which are to be as near the centre thereof as practicable, in which they will have a life estate, with a reversion in fee, to their children, reserving to their widow her dower; by the second article of the latter treaty, it is provided that a reservation of six hundred and forty acres of land shall be allowed to each head of an Indian family residing within the ceded territory, who chooses to become a citizen of the United States, in the manner stipulated in said treaty.

“The only manner stipulated in the treaty of 1817 is that the Indians who wish to become citizens shall register their names in the office of the Cherokee agent. * * *

“As the United States have alone the power of making treaties, their acts within the limits of their authority must be obligatory on the State, their constituent. They might, unquestionably, have extinguished the Indian title to the whole tract, in which case the right to the whole would have reverted to the State. Why then may they not extinguish the title to a part? The stipulations of treaty are equally binding on both parties, and it was not to have been expected that an acquisition so valuable could have been made to the State without some equivalent. The reservations are more entitled to respect since they further the policy of the State, in leading the few Indians that remain to an agricultural and civilized state.”

In 1835-'36, another treaty was concluded with the Cherokees of Georgia, after the extension of the jurisdiction of the State over them, and it is represented that the North-Carolina Cherokees were neither present or parties to that treaty, and knowing their opposition to it, a clause was inserted, which appears to have been intended to reconcile that portion of the tribe to the cession of their lands, by extending to them the provisions of the treaties of 1817, and 1819, to permit such as were opposed to removal west, to reside permanently in the country. The article referred to, is in the following words:

"Those individuals and families of the Cherokee nation, that are averse to a removal to the Cherokee country, west of the Mississippi, and are desirous to become citizens of the States, where they reside, and such as are qualified to take care of themselves and their property, shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and per capita as soon as the appropriation is made."

Shortly after the conclusion of the treaty, the North-Carolina Cherokees, it is represented memorialized the General Assembly of North-Carolina, and represented therein, that it was their intention to remain permanently in their native country, subject to the laws of the State, and requested some law to be passed for their protection, to take effect after the removal of the Cherokees of Georgia was to have been completed, under the provisions of the treaty. This is presumed to have led to the passage of the following act:

"*Be it further enacted, &c.*, That all contracts of every nature and description, made after the eighteenth of May, one thousand and eight hundred and thirty-eight, with any Cherokee Indian, or any person of Cherokee Indian blood, within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some memorandum thereof be made in writing, and signed by such Indian or some person by him authorized in the presence of two creditable witnesses who shall also subscribe the same. (See act of 1836-37.)

In consequence of the Federal Government having failed to extend to the North-Carolina Cherokees all the personal benefits of the treaty of 1835-'6, application was made to the General Assembly for the passage of a resolution in their favor, which received the unanimous approval of both Houses.

RESOLUTIONS RELATING TO THE CHEROKEE INDIANS.

"*Resolved*, That our Senators and Representatives in Congress of the United States, are hereby requested to use their influence in favor of obtaining a settlement of the just claims of the Cherokee Indians residing in this State, &c.

“Resolved further, That his Excellency, the Governor, be requested to send a copy of the foregoing resolutions to our Senators and Representatives in Congress.

“Read three times in the General Assembly, and ratified the 8th of January, 1846.”

EDWARD STANLY,

Speaker of the Commons.

BURGESS S. GATHER,

Speaker of the Senate.

After this, an appeal in favor of the North-Carolina Cherokees was made to the President of the United States, who referred the subject to the Attorney General, who on the 19th of September, 1848, among other subjects, gave the following opinion on a question submitted by the President of the United States. “3. Whether the treaty of 1835, made with the Cherokee Indians of Georgia, does or does not convey to the United States the lands granted to the North-Carolina Indians by the act of 1783; whether the powers of the Cherokees as a nation had, or had not, ceased to exist at the time the treaty of December, 1835, was concluded, in consequence of the tribe having passed under the dominion of the State.”

The other three questions may be solved into three inquiries: Whether the lands in North-Carolina belonged to the North-Carolina Indians residing on them, these lands have been sold by the State of North-Carolina, and are, I presume, in the possession of the purchasers. As the Executive of the United States would have no power to divest those in possession, and the question is one for the judiciary, I have deemed it necessary to express my views upon the hard measures which seem to have been dealt out to the North-Carolina Indians, whose lands have been sold while they have received no corresponding benefit. (See opinion of the Hon. Jno. Y. Mason of the 19th of December, 1845.)

In 1850, the North-Carolina Cherokees were embraced in the census, and formed a part of the population of this State, and of the United States, on which the members in the General Assembly and in Congress were apportioned. (See census on file in the State Department.)

Subsequently, the Commissioner of Indian Affairs, raised the question as to the right of the Government to affect the right of the North-Carolina Cherokees to remain in their native country, by withholding the payment of money due to them, which was referred to the Attorney-General of the U. States for his opinion thereon. The quotation from the argument in their favor, and the decision of the Attorney-General, serve to explain the attachment of these Indians to their native country, and their right to remain under the provisions of the treaties.

In speaking of the condition of the North-Carolina Cherokees, and the country occupied by them, it is stated—

“That country is endeared to those Indians by the graves and sacred relics of their ancestors; the bones of their children, sisters, brothers, fathers, and mothers, lie there; they say, “We cannot leave them; let us alone in the land of our fathers. Why ask us to remove West? We once owned all the land that could be seen from the tops of our highest mountains; will you not permit us to enjoy in peace the small quantity we have purchased?” They ask, “Where are our brothers, who were forced from the mountains of North-Carolina? Two-thirds have been buried on the road to Arkansas, and in that sickly country. Where are the Ridges and Boudinots, who were promised the protection of the United States? Have they not been massacred? Their blood cries from the ground. Where are the midnight assassins? Have they not been pardoned by the Cherokee Government, without trial, contrary to both law and treaties? Will you then ask us to remove, and join a Government too weak and too unjust to protect us, and leave a State where our lives, liberties, and property, are secured?—where our rights to remain are guarantied by solemn treaties?” ”

Fortunate for the Indians, in the office of the Attorney-General was found too high a regard for justice, and the sacred obligations of treaties to favor the policy proposed by the reputed Father of the red man of the forest, as the opinion demonstrates:

“Question fourth: ‘If any of the Cherokees who have not

removed west of the Mississippi river are entitled, may they be required to emigrate, as a condition precedent to their being paid?' Answer: The treaty of 1835, article twelve, conceded the rights of individuals and families of Cherokees, who were averse to the removal to the Cherokee country, west of the Mississippi, to remain east, and to receive their due portions of the money, to be distributed *per capita*. The treaty of 1846, article ten, recognized these claims of the Cherokees then, at the date of the treaty, residing east of the Mississippi river. On this subject I have hereinbefore expressed my views. To require these Indians, so residing east of the river Mississippi at the date of the treaty of August, 1846, to remove to the Cherokee country west, as a condition precedent to their being paid their dividend *per capita* of the balance of the purchase money for the lands east of the Mississippi river, ceded by their nation to the United States, would be without any authority of law, and a breach of the faith of the treaties of 1835 and 1846, as I think and firmly believe."

Very respectfully, yours, &c.,

JOHN J. CRITTENDEN.

April 11, 1851.

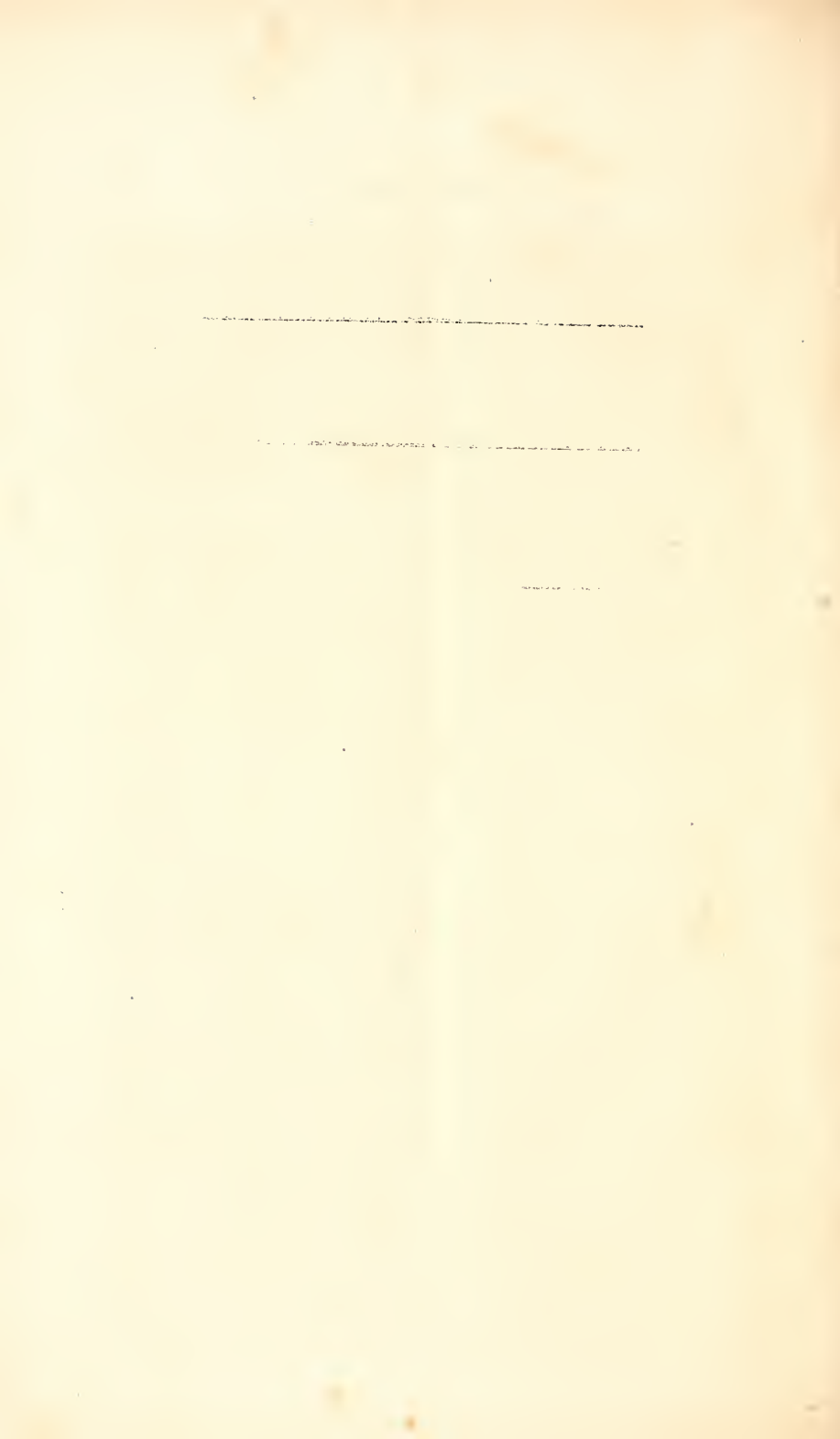
Under the administration of President Buchanan, the policy of the federal government in relation to the Indian tribes has undergone a change, and instead of removing the Indians from place to place, the policy now is to permit them permanently to remain in those localities to which the associations of their youth and the graves of their sires so much attach them, and, where they may, by the association and moral influence of refinement, gradually emerge from savage into civilized life. Under these circumstances, it is not probable that the State of North Carolina would, at any time, violate her plighted faith to the North Carolina Cherokees in permitting them to remain permanently in their native country; but, if a different policy should at any time prevail, then the Cherokees would have the right to appeal to the Supreme Court of the United States to enforce their rights to permanent residence as guaranteed by the treaties of 1817, 1819

and 1855, and it would very probably result in an application to the Supreme Court of the United States, which has jurisdiction of all questions arising under treaties, and the result might not only prove injurious to the purchaser of the State's title, but in the end, injurious to the State. For the reasons herein contained, to which the committee have given much investigation, they instruct me to report the accompanying bill and recommend its passage.

WM. J. HOUSTON,
Chairman of Committee.







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